

branch offices in forty-two states and in more than fifty foreign countries. Its annual revenues exceed \$1 billion. George Wackenhut remains the chairman of the company, but the day-to-day operations are handled by his son, Richard. Over the years Wackenhut's board of directors has read like a Who's Who of national security, including a former head of the FBI, a former head of the Defense Intelligence Agency, a former CIA director, a former CIA deputy director, a former head of the Secret Service, a former head of the Marine Corps, and a former Attorney General. After the company decided to enter the private-prison industry, it hired Norman Carlson, who had headed the Federal Bureau of Prisons.

Last year Wackenhut Corrections became the first private company ever hired by the Federal Bureau of Prisons to manage a large facility. The federal government's long-standing relationship with Wackenhut has developed an odd equilibrium: one wields the power while the other reaps the financial rewards. Kathleen Hawk Sawyer, the current director of the Federal Bureau of Prisons, is responsible for the supervision of about 115,000 inmates, including drug lords, international terrorists, and organized-crime leaders. Her salary last year was \$125,900. George C. Zoley, the chief executive officer of Wackenhut Corrections, is responsible for the supervision of about 25,000 state and federal inmates, mostly illegal aliens, low-level drug offenders, petty thieves, and parole violators. His salary last year was \$366,000—plus a bonus of \$122,500, plus a stock-option grant of 20,000 shares. At least half a dozen other executives at Wackenhut Corrections were paid more last year than the head of the Federal Bureau of Prisons.

The Corrections Corporation of America is the nation's largest private-prison company; it recently participated in a buyout of the U.S. Corrections Corporation, thereby obtaining several thousand additional inmates. CCA was founded in 1983 by Thomas W. Beasley and Doctor R. Crants, Nashville businessmen with little previous experience in corrections. Beasley, a former chairman of the Tennessee Republican Party, later told *Inc.* magazine his strategy for promoting the concept of private prisons: "You just sell it like you were selling cars, or real estate, or hamburgers." Beasley and Crants recruited a former director of the Virginia Department of Corrections to help run the company. In 1984 CCA accepted its first Texas inmates, before it had a completed facility in that state. The inmates were housed in rented motel rooms; a number of them pushed the air-conditioning units out of the wall and escaped. A year later Beasley approached his good friend Lamar Alexander, the governor of Tennessee, with an extraordinary proposal: CCA would buy the state's entire prison system for \$250 million. Alexander supported the idea, saying, "We don't need to be afraid in America of people who want to make a profit." His wife, Honey, and the speaker of the Tennessee House, Ned McWherter, were among CCA's early investors; between them the two had

owned 1.5 percent of CCA's stock; they sold their shares to avoid any perceived conflict of interest. Nevertheless, the CCA plan was blocked by the Democratic majority in the legislature.

CCA expanded nationwide over the next decade, winning contracts to house more than 40,000 inmates and assembling the sixth largest prison system in the United States; but it never lost the desire to take over all the prisons in Tennessee. In order to achieve that goal, CCA executives established personal and financial links with figures in both political parties. During the spring of last year CCA's allies in the Tennessee legislature began once again to push for privatization. Crants said that letting CCA run the prisons would save the state up to \$100 million a year; he did not specify how these dramatic savings would be achieved. George Zoley, the head of Wackenhut Corrections, argued that handing over the Tennessee prison system to a single company would simply turn a state monopoly into a private one. Wackenhut employed the law firm of the former U.S. senator Howard Baker to lobby on its behalf, seeking a piece of the action.

By February of this year a compromise of sorts had emerged in Tennessee. New legislation proposed shifting as much as 70 percent of the state's inmate population to the private sector; CCA and Wackenhut would both get a chance to bid for prison contracts. The new privatization bill seemed a sure thing. It was never put before the legislature for a vote, however. On April 20 CCA announced plans for a corporate restructuring so complex in its details that many Wall Street analysts began to wonder about the company's financial health. The price of CCA stock—which in recent years had been one of the nation's top performers—began to plummet, declining in value by 25 percent over the next several days. At the annual CCA shareholders meeting, last May, Crants compared Wall Street investors to "wildebeests" stampeding out of fear, and blamed the stock's plunge on a single broker who had sold 640,000 shares.

Crants neglected to tell CCA shareholders a crucial bit of information: he himself had sold 200,000 shares of CCA stock just weeks before the announcement that sent its value tumbling. By selling his stock on March 2, Crants had avoided a loss of more than \$2.5 million. When asked recently to explain his CCA financial dealings, Crants declined to comment. The timing and the size of that stock transaction are likely to be of interest to the attorneys who have filed more than half a dozen lawsuits on behalf of CCA shareholders.

Although conservatives have long worried about the loss of American sovereignty to international agencies such as the United Nations and the World Bank, the globalization of private-prison companies has thus far eluded criticism. A British private-prison company, Securicor, operates two facilities in Florida. Wackenhut Corrections is now under contract to operate Doncaster prison, in England; three prisons in Australia; and a prison in Scotland. It is actively seeking

prison contracts in South Africa. CCA has received a good deal of publicity lately, but few of the articles about it have mentioned that the largest shareholder of America's largest private-prison company is Sodexo Alliance—a food-service conglomerate whose corporate headquarters are in Paris.

### THE MEGA-PRISON

**A**BOUT 200 inmates were in the A yard at New Folsom when I visited not long ago. They were playing softball and handball, sitting on rocks, standing in small groups, smoking, laughing, jogging around the perimeter. Three unarmed correctional officers casually kept an eye on things, like elementary school teachers during recess. The yard was about 300 feet long and 250 feet wide, with more dirt than grass, and it was hot, baking hot. The heat of the sun bounced off the gray concrete walls enclosing the yard. "These are the sensitive guys," a correctional officer told me, describing the men in Facility A. Most of them had killed, raped, committed armed robberies, or misbehaved at other prisons, but now they were trying to stay out of trouble. Some were former gang members; some were lifers because of a third strike; some were getting too old for prison violence; some were in protective custody because of their celebrity, their snitching, or their previous occupation. A few of the inmates on the yard were former police officers. As word spread that I was a journalist, groups of inmates followed me and politely approached, eager to talk. Lieutenant Billy Mayfield, New Folsom's press officer, graciously kept his distance, allowing the prisoners to speak freely.

"I shouldn't be here" was a phrase I heard often, followed by an impassioned story about the unfairness of the system. I asked each inmate how many of the other men in the yard deserved to be locked up in this prison, and the usual response was "These guys? Man, you wouldn't believe some of these guys; at least two thirds of them should be here." Behind the need to blame others for their predicament and the refusal to accept responsibility, behind all the denial, lay an enormous anger, one that seemed far more intense than the typical inmate complaints about the food or the behavior of certain officers. Shirtless, sweating, unshaven, covered in tattoos, one inmate after another described the rage that was growing inside New Folsom. The weights had been taken away; no more conjugal visits for inmates who lacked a parole date; not enough help for the inmates who were crazy, really crazy; not enough drug treatment, when the place was full of junkies; not enough to do—a list of grievances magnified by the overcrowding into something that felt volatile, ready to go off with the slightest spark. As I stood in the yard hearing the anger of the sensitive guys, the inmates in Facility C were locked in their cells, because of a gang-related stabbing the previous week, and the inmates in Facility B were being shot with pepper spray to break up a fight.

The acting warden at New Folsom when I visited, a woman named Suzan Hubbard, began her career as a correctional officer at San Quentin nineteen years ago. Although she has a degree in social work from the University of California at Berkeley, Hubbard says that her real education took place at the "college of San Quentin." She spent a decade at the prison during one of its most violent and turbulent periods. In her years on the job two fellow staff members were murdered. Hubbard learned how to develop a firm but fair relationship with inmates, some of whom were on death row. She found that contrary to some expectations, women were well suited for work in a maximum-security prison. Communication skills were extremely important in such a charged environment; inmates often felt less threatened by women, less likely to engage in a clash of egos. Hubbard was the deputy warden at New Folsom on September 27, 1996, when fights broke out in the B yard. At nine o'clock in the morning she was standing beside her car in the prison parking lot, and she heard three shots being fired somewhere inside New Folsom. Everyone in the parking lot froze, waiting for the sound of more gunfire. After more shots were fired, Hubbard hurried into the prison, made her way to the B yard, and found it in chaos.

A group of Latino gang members had launched an attack on a group of African-American gang members, catching them by surprise and stabbing them with homemade weapons. The fighting soon spread to the other inmates in the exercise yard, who divided along racial lines. As many as 200 inmates were involved in the riot. Correctional officers instructed everyone in the yard to get down; they fired warning shots, rubber bullets, and then live rounds. When Hubbard arrived at the yard, about a hundred inmates had dropped to the ground and another hundred were still fighting. The captain in charge of the unit stood among a group of inmates, telling them, "Sit down, get down, we'll take care of this." Hubbard and the other officers circulated in the yard, calling prisoners by name, telling them to get down. It took thirty minutes to quell the riot. Twelve correctional officers were injured while trying to separate combatants. Six inmates were stabbed, and five were shot. Victor Hugo Flores, an inmate serving an eighteen-year sentence for voluntary manslaughter and attempted murder, was killed by gunfire.

Hubbard finds working in the California penal system to be stressful but highly rewarding. She tries to defuse tensions by talking and listening to the inmates on the yards. She and her officers routinely place themselves at great risk. Last year 2,583 staff members were assaulted by inmates in California. Thousands of the inmates are HIV-positive; thousands more carry hepatitis C. Officers have lately become the target of a new form of assault by inmates, known as gassing. Being "gassed" means being struck by a cup or bag containing feces and urine. The California prison system, especially its Level 4 facilities, is full of warring gangs—members of the Crips, the Bloods, the Fresno Bulldogs, the Aryan Brother-

hood, the Nazi Lowriders, the Mexican Mafia, and the Black Guerrilla Family, to name a few. In addition to the organized violence, there are random acts of violence. On June 15 of last year a correctional officer was attacked by an inmate in the infirmary at New Folsom. The officer, Linda Lowery, was savagely beaten and kicked, receiving severe head wounds. Her attacker was serving a four-year sentence for assaulting an officer.

California's correctional officers are not always the victims when violence occurs behind bars: in recent months they have been linked to several widely publicized acts of brutality. At Pelican Bay State Prison at least one officer conspired with inmates to arrange assaults on convicted child molesters. At Corcoran State Prison officers allegedly staged "gladiator days," in which rival gang members were encouraged to fight, staff members placed bets on the outcome, and matches often ended with inmates being shot. As the FBI investigates alleged abuses at Corcoran and allegations of an official cover-up, correctional officers are feeling misrepresented and unfairly maligned by the media—only adding to the tension in California's prisons.

The level of violence in the California penal system is actually lower today than it was a decade ago. But the rate of assaults among inmates has gradually climbed since its low point, in 1991. Studies have linked double-bunking and prison overcrowding with higher rates of stress-induced mental disorders, higher rates of aggression, and higher rates of violence. In the state's Level 4 prisons almost every cell is now double-bunked. The fact that more bloodshed has not occurred is a testament to the high-tech design of the new prisons and the skills of their officers. Nevertheless, Cal Terhune, the director of the California Department of Corrections, worries about how much more stress the system can bear, and about how long it can go without another riot. "We're sitting on a very volatile situation," Terhune says. "Every time the phone rings here, I wonder . . ."

**T**HIRTY years ago California was renowned for the liberalism of its criminal-justice system. In 1968 an inmate bill of rights was signed into law by Ronald Reagan, then the governor of California. More than any other state, California

was dedicated to the rehabilitative ideal, to the belief that a prison could take a criminal and "cure" him, set him on the right path. California's prisons were notable for their many educational and vocational programs and their group-therapy sessions. In those days every state in the country had a system of indeterminate prison sentences. The legislature set the maximum sentence for a crime, and judges and parole boards tried to make the punishment fit the individual. California's system was the most indeterminate: the sentence for a given offense might be anything from probation to life. The broad

range of potential sentences gave enormous power to the parole board, known as the Adult Authority; a prisoner's release depended on its evaluation of how well his "treatment" was proceeding. One person might serve ten months and another person ten years for the same crime.

Although indeterminate sentencing had many flaws, one of its virtues was that it gave the state a means of controlling the size of the prison population. If prisons grew too full, the parole board could release inmates who no longer seemed to pose a threat to public safety. Governor Reagan used the Adult Authority to reduce the size of California's inmate population, giving thousands of prisoners an early release and closing one of the state's prisons. By the mid-1970s, however, the Adult Authority had come under attack from an unusual coalition of liberals, prisoners, and conservative advocates of law and order.

Liberals thought that the Adult Authority discriminated against minorities, making them serve longer sentences. Prisoners thought that it was unfair; after all, they were still in prison. Conservatives thought that it was too soft, allowing too many criminals back on the street too soon. And no one put much faith in the rehabilitative effects of prison. In 1971 seventeen inmates and seven staff members were killed in California prisons. The following year thirty-five inmates and one staff member were killed.

California was one of the first states in the nation to get rid of indeterminate sentencing. The state's new law required inmates to serve the sentence handed down by the judge, with an allowance for "good time," which might reduce a prison term by half. The law also amended the section of the state's penal code that declared the ultimate goals of impris-

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onment: the word "rehabilitation" was replaced by the word "punishment." In 1976 the bill was endorsed and signed into law by a liberal Democrat, Governor Jerry Brown.

As liberalism gave way to demands for law and order, California judges began to send a larger proportion of convicted felons to prison and to give longer sentences. The inmate population started to grow. Sentencing decisions made at the county level, by local prosecutors and judges, soon had a major impact on the state budget, which covered the costs of incarceration. Tax cuts mandated by Proposition 13 meant that county governments were strapped for funds and could not maintain local jails properly or pay for community-based programs that administered alternative sentences. Offenders who might once have been sent to a local jail or a halfway house were now sent to a state prison. California's criminal-justice system slowly but surely spun out of control. The state legislature passed hundreds of bills that required tough new sentences, but did not adequately provide for their funding. Judges sent people to prison without giving any thought to where the state would house them. And the Department of Corrections was left to handle the flood of new inmates, unable to choose how many it would accept or how many it would let go.

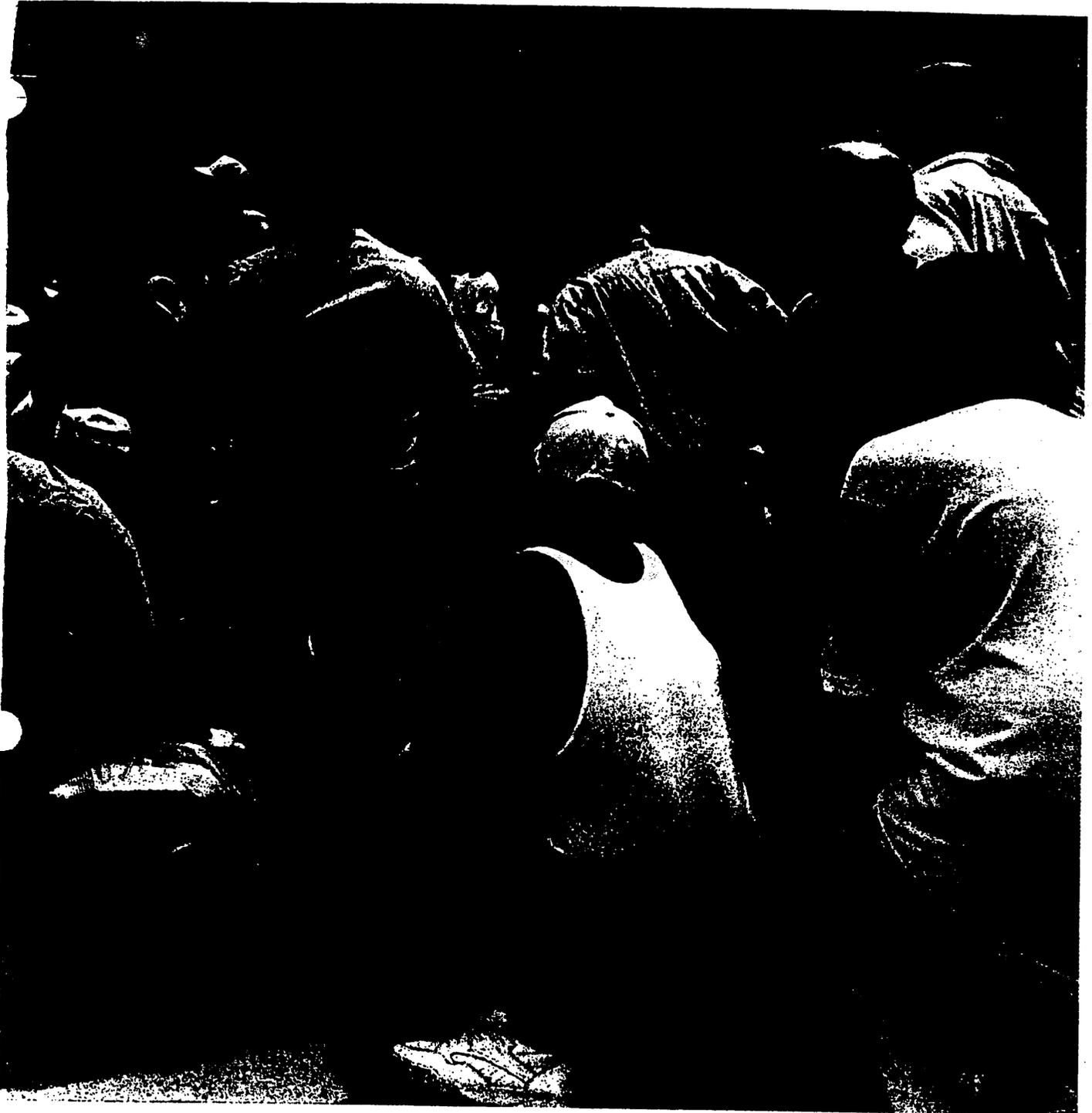
In 1977 the inmate population of California was 19,600. Today it is 159,000. After spending \$5.2 billion on prison construction over the past fifteen years, California now has not only the largest but also the most overcrowded prison system in the United States. The state Department of Corrections estimates that it will need to spend an additional \$6.1 billion on prisons over the next decade just to maintain the current level of overcrowding. And the state's jails are even more overcrowded than its prisons. In 1996 more than 325,000 inmates were released early from California jails in order to make room for offenders arrested for more-serious crimes. According to a report this year by the state's Little Hoover Commission, in many counties offenders who are convicted of a crime and given sentences of less than ninety days will not even be sent to jail. The state's backlog of arrest warrants now stands at about 2.6 million—the number of arrests that have not been made, the report says, largely because there's no room in the jails. According to one official estimate, counties will need to spend \$2.4 billion over the next ten years to build more jails—again, simply to maintain the current level of overcrowding.

The extraordinary demand for new prison and jail cells in California has diverted funds from other segments of the criminal-justice system, creating a vicious circle. The failure to spend enough on relatively inexpensive sanctions, such as drug treatment and probation, has forced the state to increase spending on prisons. Only a fifth of the felony convictions in California now lead to a prison sentence. The remaining four fifths are usually punished with a jail sentence, a term of probation, or both. But the jails have no room, and



the huge caseloads maintained by most probation officers often render probation meaningless. An ideal caseload is about twenty-five to fifty offenders; some probation officers in California today have a caseload of 3,000 offenders. More than half the state's offenders on probation will most likely serve their entire term without ever meeting or even speaking with a probation officer. Indeed, the only obligation many offenders on probation must now fulfill is mailing a postcard that gives their home address.

California parole officers, too, are overwhelmed by their



caseloads. The state's inmate population is not only enormous but constantly changing. Last year California sent about 140,000 people to prison—and released about 132,000. On average, inmates spend two and a half years behind bars, and then serve a term of one to three years on parole. During the 1970s each parole agent handled about forty-five parolees; today each agent handles about twice that number. The money that the state has saved by not hiring enough new parole agents is insignificant compared with the expense of sending parole violators back to prison.

*A fight begins. Folsom prison. Represa, Calif.*

About half the California prisoners released on parole are illiterate. About 85 percent are substance abusers. Under the terms of their parole, they are subjected to periodic drug tests. But they are rarely offered any opportunity to get drug treatment. Of the approximately 130,000 substance abusers in California's prisons, only 3,000 are receiving treatment behind bars. Only 8,000 are enrolled in any kind of pre-release program to help them cope with life on the outside. Violent

offenders, who need such programs most of all, are usually ineligible for them. Roughly 124,000 inmates are simply released from prison each year in California, given nothing more than \$200 and a bus ticket back to the county where they were convicted. At least 1,200 inmates every year go from a secure housing unit at a Level 4 prison—an isolation unit, designed to hold the most violent and dangerous inmates in the system—right onto the street. One day these predatory inmates are locked in their cells for twenty-three hours at a time and fed all their meals through a slot in the door, and the next day they're out of prison, riding a bus home.

Almost two thirds of the people sent to prison in California last year were parole violators. Of the roughly 80,000 parole violators returned to prison, about 60,000 had committed a technical violation, such as failing a drug test; about 15,000 had committed a property or a drug crime; and about 3,000 had committed a violent crime, frequently a robbery to buy drugs. The gigantic prison system that California has built at such great expense has essentially become a revolving door for poor, highly dysfunctional, and often illiterate drug abusers. They go in, they get out, they get sent back, and every year there are more. The typical offender being sent to prison in California today has five prior felony convictions.

**T**HE California legislature has not authorized a new bond issue for prison construction since 1992, deadlocked over the cost. Meanwhile, the state's "Three Strikes. You're Out" law has been steadily filling prison cells with long-term inmates. Don Novey, the head of the California Correctional Peace Officers Association (CCPOA), helped to gain passage of the law. He now worries that if California's prison system becomes much more overcrowded, a federal judge may order a large-scale release of inmates. Novey has proposed keeping some nonviolent offenders out of prison, allowing judges to give them suspended sentences and a term of probation instead. He has also advocated a way to save money while expanding the penal system: build "mega-prisons." California already builds and operates the biggest prisons in the United States. A number of California prisons now hold more than 6,000 inmates—about six times the nationwide average. The mega-prisons proposed by the CCPOA would house up to 20,000 inmates. A few new mega-prisons, Novey says, could satisfy California's demand for new cells into the next century.

Correctional officials see prison overcrowding as grounds

for worry about potential riots, bloodshed, and court orders: others see opportunity. "It has become clear over the past several months," Doctor R. Crants said earlier this year, "that California is one of the most promising markets CCA has, with a burgeoning need for secure, cost-effective prison beds at all levels of government." In order to get a foothold in that market, CCA announced it would build three prisons in California entirely on spec—that is, without any contract to fill them. "If you build it in the right place," a CCA executive told *The Wall Street Journal*, "the prisoners will come."

Crants boasted to the *Tennessean* that California's private-prison industry will be dominated by "CCA alone." Executives at Wackenhut Corrections think otherwise. Wackenhut already houses almost 2,000 of California's minimum-security inmates at facilities in the state. The legislature has recently adopted plans to house an additional 2,000 minimum-security inmates in private prisons. Wackenhut and CCA have opened offices in Sacramento and hired expensive lobbyists. The CCPOA vows to fight hard against the private-prison companies and their anti-union tactics. "They can build whatever prisons they want," Don Novey says. "But the hell if they're going to run them." One of the new CCA prisons is rising in the Mojave Desert outside California City, at a cost of about \$100 million. The company is gambling

that cheap, empty prison beds will prove irresistible to California lawmakers. The new CCA facility promises to be a boon to California City once the inmates start arriving. The town has been hit hard by layoffs at Edwards Air Force Base, which is nearby. Mayor Larry Adams, asked why he wanted a prison, said, "We're a desperate city."

## FACTORIES FOR CRIME

**A**LEXIS de Tocqueville's *Democracy in America* is one of the most famous books ever written about the politics and culture of the United States. The original purpose of Tocqueville's 1831 journey to this country is less well known. He came to tour its prisons on behalf of the French government. The United States at the time was renowned in Europe for having created a whole new social institution: the penitentiary. In New York and Pennsylvania prisons were being designed not to punish inmates but to reform them. Solitary confinement, silence, and hard work were imposed in order to encourage spiritual and moral change. At some penitentiaries officials placed hoods over the heads of newcomers to isolate them from other inmates. After visiting American prisons Tocqueville and his travel-



*New Folsom, Represa, Calif.*

ing companion. Gustave de Beaumont, wrote that social reformers in the United States had been swept up in "the monomania of the penitentiary system," convinced that prisons were "a remedy for all the evils of society."

The historian David J. Rothman, author of *The Discovery of the Asylum* (1971), has noted one of the ironies of America's early-nineteenth-century fondness for prisons. The idea of the penitentiary took hold at the height of Jacksonian democracy, when freedom and the spirit of the common man were being widely celebrated. "At the very moment that Americans began to pride themselves on the openness of their society, when the boundless frontier became the symbol of opportunity and equality," Rothman observes, "notions of total isolation, unquestioned obedience, and severe discipline became the hallmarks of the captive society." More than a century and a half later political rhetoric about small government and the virtues of the free market is being accompanied by an eagerness to deny others their freedom. The hoods now placed on inmates in the isolation units at maximum-security prisons are not intended to rehabilitate. They are designed to protect correctional officers from being bitten or spat upon.

The standard justification for today's prisons is that they prevent crime. The rate of violent crime in the United States has indeed been declining since 1991. The political scientist James Q. Wilson, among many others, believes that the recent rise in the nation's incarceration rate has been directly responsible for the decrease in violent crime. Although the validity of the theory seems obvious (murderers and rapists who are behind bars can no longer kill and rape ordinary citizens), it is difficult to prove. Michael Tonry, a professor of law and public policy at the University of Minnesota, is an expert on international sentencing policies and an advocate of alternative punishments for nonviolent offenders. He acknowledges that the imprisonment of almost two million Americans has prevented some crimes from being committed. "You could choose another two million Americans at random and lock them up," Tonry says, "and that would reduce the number of crimes too." But demographics and larger cultural trends may be responsible for most of the decline in violent crime. Over the past decade Canada's incarceration rate has risen only slightly. Nevertheless, the rate of violent crime in Canada has been falling since 1991. Last year the homicide rate fell by nine percent. The Canadian murder rate has now reached its lowest level since 1969.

Christopher Stone, the head of New York's Vera Institute of Justice, believes that prisons can be "factories for crime." The average inmate in the United States spends only two years in prison. What happens during that time behind bars may affect how he or she will behave upon release. The lesson being taught in most American prisons—where violence, extortion, and rape have long been routine—is that the strong will always rule the weak. Inmates who display

the slightest hint of vulnerability quickly become prey. During the 1950s and 1960s prison gangs were formed in California and Illinois as a means of self-protection. Those gangs have now spread nationwide. The Mexican Mafia and the Aryan Brotherhood have gained power in Texas prisons. The Gangsta Killer Bloods and the Sex Money Murder Bloods have emerged in New York prisons. America's prisons now serve as networking and recruiting centers for gang members. The differences between street gangs and prison gangs have become less distinct. The leaders of prison gangs increasingly direct illegal activity both inside and outside. A 1996 investigation by the *Chicago Tribune* found that gangs had gained extraordinary control over the state prisons in Illinois: formal classes at the Stateville prison law library had taught the history and rules of the Maniac Latin Disciples; a leader of the Gangster Disciples had at various times kept cellular phones, a color television, a stereo, a Nintendo Game Boy, a portable washing machine, and up to a hundred pounds of marijuana in his cell. Many of the customs, slang, and tattoos long associated with prison gangs have become fashionable among young people. In cities throughout America, the culture of the prisons is rapidly becoming the culture of the streets.

The spirit of every age is manifest in its public works, in the great construction projects that leave an enduring mark on the landscape. During the early years of this century the Panama Canal became President Theodore Roosevelt's legacy, a physical expression of his imperial yearnings. The New Deal faith in government activism left behind huge dams and bridges, post offices decorated with murals, power lines that finally brought electricity to rural America. The interstate highway system fulfilled dreams of the Eisenhower era, spreading suburbia far and wide; urban housing projects for the poor were later built in the hopes of creating a Great Society.

"The era of big government is over," President Bill Clinton declared in 1996—an assertion that has proved false in at least one respect. A recent issue of "Construction Report," a monthly newsletter published by *Correctional Building News*, provides details of the nation's latest public works: a 3,100-bed jail in Harris County, Texas; a 500-bed medium-security prison in Redgranite, Wisconsin; a 130-bed minimum-security facility in Oakland County, Michigan; two 200-bed housing pods at the Fort Dodge Correctional Facility, in Iowa; a 350-bed juvenile correctional facility in Pendleton, Indiana; and dozens more. The newsletter includes the telephone numbers of project managers, so that prison-supply companies can call and make bids. All across the country new cellblocks rise. And every one of them, every brand-new prison, becomes another lasting monument, concrete and ringed with deadly razor wire, to the fear and greed and political cowardice that now pervade American society. ♡

**PRIVATIZATION OF CORRECTIONAL SERVICES**  
**Critical Issues for State Policymakers**

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**May 1998**

## **PRIVATIZATION OF CORRECTIONAL SERVICES**

### **Critical Issues for State Policymakers**

#### **Introduction**

Many states are facing choices regarding whether (or to what extent) they might privatize operations of correctional facilities. Although private prisons occupy a fast-growing and increasingly high-profile segment of the correctional services delivery system in the U.S., there are relatively few independent, methodologically sound evaluations of correctional privatization. While many hold a strong belief that market dynamics spur the private sector toward cost efficiencies which cannot be not yielded by the public sector, there is yet no large body of empirical evidence that this is true in the correctional services field. The data about existing cost and quality differentials which have been compiled for analysis to date are by no means definitive, and the research findings are often contradictory. A variety of critical issues and concerns which have been voiced by those who have closely examined the experience of correctional privatization remain unresolved. While most (though not all) experts in this field agree that competition is providing a healthy stimulant for improving correctional cost-efficiencies, there are many issues under hot contention among them. The debates generally focus on four basic objectives of privatization:

- **To cut the size and scope of government:**

It is axiomatic that this goal can be reached by shifting the correctional workforce from public operations to the private sector. It does not necessarily follow that such a move will result in actual cost savings. Since this is essentially an ideological goal, no amount of available empirical data regarding the experience over the past decade-and-a-half is likely to settle debate about the wisdom of its pursuit.

- **To cut red tape:**

There is no question about the ability of private firms to expedite the *expansion* of correctional resources since they are able to dispense with the intricacies of the public procurement process, and can re-package capital costs as operational expenses. On the downside, such private development may *raise* the price tag for prison expansion.

- **To cut operational costs:**

Research findings on this point are mixed. While a recent study by researchers at Louisiana State University certainly offers strong support for this goal, it is still not possible to generalize about the applicability of positive findings across jurisdictional boundaries. Moreover there is evidence that privatization sometimes carries a *higher* price tag.

- **To improve performance:**

The basic argument is that the rigors of market competition provide inherent incentives for efficiency. It is also asserted that privatization allows for more rigorous governmental enforcement of standards, since under an operational contract the risks of failing to meet contractual requirements may threaten its continuation or renewal. The history of correctional privatization is far from problem-free, however. Recent events in Texas clearly demonstrate that privatization offers no insurance against substandard conditions and brutality. Yet too many public facilities are plagued with these same problems, and -- as is also demonstrated in the Texas situation -- private contracts may in fact be broken off when such problems become highly publicized.

There are many interlocking elements which need to be carefully analyzed as state-level policymakers deliberate about whether or not to expand privatization of any portion of correctional services. Many will question whether it is appropriate -- ethically, practically, financially -- to privately contract a significant portion of a state's correctional functions. All who become concerned with the issues will want to know what the existing body of research on privatization can tell them that is pertinent to their particular context.

The recent experience in the U.S. with prison privatization has primarily been in Southern and Western states where -- for a variety of reasons -- prison population pressures have been greatest and expansion of correctional capacity has been most rapid. Overcrowding in these states has nonetheless been high, while correctional costs are

relatively low for a variety of reasons: labor-market factors, a non-unionized work force, general economic conditions, fiscal pressures and budgetary constraints. Policymakers need to closely examine the relevance for their state of the available knowledge about the benefits and pitfalls of privatization in jurisdictions which may have markedly different political and economics circumstances. They will need to know if there is sufficient transferable, applicable evidence of cost and quality advantages that can inform them as they consider the difficult choices which may be placed before them in the future.

The Texas Sunset Advisory Commission has compared costs (no quality dimensions were compared) for four contract facilities in Texas with hypothetical public prisons. They concluded that cost savings were at the least meeting the 10 percent savings benchmark required by law in Texas.

Charles Logan completed a comparison of three women's prisons (federal, state, and privately operated) in New Mexico which found quality advantages for the private facility along most of the qualitative dimensions studied, but there was little attention given cost issues.

On the other hand, a recent Tennessee legislative panel study has found little difference in cost (or quality), comparing two public prisons with a private facility in that state. Subsequent studies in California, as well as analysis of data from prisons in Tennessee and Louisiana (two private and one public prison) performed by legislative analysts in Washington state, found no consistent cost or quality advantages for either public or private facilities. And a General Accounting Office report published last year reviewed the array of recent research and concluded that the cost-savings argument has not yet been won by either side.

More recently a comprehensive study by researchers at Louisiana State University (published too late for consideration in the GAO report) compared data from the same three prisons reviewed by the Washington analysts and came to different conclusions. The LSU team found distinct and substantial safety, performance, and costs advantages for Corrections Corporation of America- and Wackenhut-operated facilities over a comparable state-run facility

### **Ethics and Governance**

Many experts have questioned both the wisdom and the ethics of delegation of one of the most sensitive areas of governmental power into private hands driven by the profit motive. They argue that as private corporations gain a stronger foothold in the correctional field their corporate interests (which in many areas may run directly counter to the public's interests) will wield powerful leverage in crucial public policy debates about sentencing and corrections issues. These critics claim that opening the field of corrections to the dynamics of the private market results in commodification of America's offender population, and that because the over-arching goal of the private sector is to maximize profits, the mission of corrections will eventually be reduced to simply warehousing prisoners. They cite the strong focus on cost-cutting and economic benefits in the promotional brochures produced by the leading correctional corporations as evidence that their executives do not "even pay lip-service" to a correctional mission. And some critics argue that since recidivism only expands the market for correctional services, the "market incentive" is inevitably corrosive of that mission.

Further, many critics contend that the fiscal and policy incentives which now prod public officials in pursuit of rational sentencing and penal policies -- geared to more effective control of prison population levels -- will be undercut by a predictable corporate interest in expanding their markets. They argue that private corrections executives share a

vested interest in increased reliance on incarceration and will cultivate and expend considerable political leverage behind the scenes to promote this end. The advantages that private vendors deliver through their ability to cut red tape by circumventing the public financing and procurement processes work at the same time to short-cut important public policy deliberations, and to limit public participation in review of important policy decisions, thwarting procedural mechanisms designed to safeguard the public interest.

It is argued that once they enter the legislative arena in a state, the compelling enticements offered by the private sector about easing the burdens involved in expanding the scope of institutional corrections (e.g. "limited up-front costs," "pre-arranged financial packages," "franchise fees," "faster start-up," "cost savings," and "economic benefits to the local community") may short-circuit thoughtful consideration of alternative investments in effective community corrections options -- thus further circumventing citizen input on crucial policy choices with far-reaching economic impacts. The immediate cost savings gained may not prove to be cost-effective in the long run. The sophisticated public relations techniques and powerful lobbying forces the larger corporations field to launch their sales campaigns in states create a forceful momentum toward institutional privatization as the cheaper option, even in instances where data can be produced to demonstrate otherwise. The ability these corporations enjoy to operate "insulated from public pressures" and "free from political influence" also serves to isolate them from the public eye. Many types of information which can be routinely obtained from governmental agencies regarding their operations remains inaccessible from private corporations, which hold them to be "business secrets."

Most empirical research on prison privatization has focused on the cost and performance issues (though generally not in terms of longer term outcome measures like recidivism and post-prison employment records). Although many critics of privatization

have raised objections on the philosophical and ethical grounds mentioned above, these issues have not been much explored by evaluators, and little is known about the extent to which these fears have been realized -- or will be met in the future as privatization expands and matures. Privatization of correctional services is steadily increasing, and there are many signs that the private share of state correctional resources will expand at increasing rates of growth in the near future.

Political support for the idea is growing fast across the nation and serious proposals for contracting ever larger proportions of the prison budget are cropping up daily. In two states -- Tennessee and Florida -- ambitious schemes are being pushed to privatize large portions of existing correctional resources. It has already been determined that at least one half of all District of Columbia prisoners will be shifted to private facilities in the near future. Yet the growth of privatized corrections in Texas, the state with the longest history of privatization and the largest share of private prison beds, has recently burst forth a flood of national news stories about the risks and pitfalls.

Important ethical questions have not yet been answered through empirical research and these are ripe for exploration:

- Will the profit motive lead to harsher sentencing policies and further increase the scale of imprisonment?
- Is there evidence that deceptive marketing, "transfer-pricing" or "loss-leader" tactics are drawing state governments toward a degree of reliance on privatization which will lead to price-gouging later, or weaken the quality and effectiveness of correctional operations in the future?
- Can the integrity of public governance and accountability be safeguarded, and will the state's "controlling interests" be protected, if large segments of correctional services become privatized?

The recent spate of problems in Texas and elsewhere indicate that no state official should under-estimate the cost of effective monitoring of private facilities. There are also numerous indications that without close supervision, private personnel and procurement standards and practices may not meet state standards which have been put in place by policymakers for good reason. Tight contract enforcement and regulation along with day-to-day on-site monitoring is expensive. It has been estimated by one expert at four percent of the contract amount. In the light of the recent scandal at the Texas Jail Standards Commission involving the Bobby Ross Group, it would appear that increased safeguards are necessary to ensure that this function is performed without bias and remains free of conflict of interest. And watching the watchdogs will incur *added* costs.

### **Costs**

The proponents of correctional privatization generally frame their case in simplistic terms: obtaining the highest quality of services at the lowest possible price. Consequently, in the public debate about privatization all issues of performance -- in terms of safety, security, and program effectiveness -- are intricately entwined with arguments about cost savings. As was discussed above, it is still fair to say that no clear generalizations or conclusions can yet be drawn on these points from the findings produced by the most recent credible cost-comparison studies.

Yet even the most favorable findings of well-structured cost-comparison research cannot be simply transported across state lines as solid evidence that these benefits will pertain equally in other jurisdictions where different labor-market dynamics are in force, and the cost of doing business may be subject to regional economic variations and differences in the prevailing correctional philosophies. Moreover, even rigorous field

studies of correctional costs and performance outcomes are, to some degree, subject to the "Hawthorn Effect."

When operating beyond a careful researcher's microscope, correctional cost issues become subject to a variety of mundane dynamics. For example, there is ample evidence to show that some private companies have held costs down by stocking their facilities with healthier, less difficult prisoners who are cheaper to manage or treat -- and who can be transferred out if problems do arise -- leaving the state with a more costly, ill, intractable prison population. Critics complain that the types of correctional treatment programs which tend to be offered in many private facilities are designed to serve the more amenable offenders in the prison population, and that screening criteria for them may be built into transfer agreements with public corrections (e.g., in Florida). Some contracts carry negotiated "caps" on per-inmate medical costs, with the state absorbing most of the expense of treating any prisoner who develops a serious illness. In Minnesota, for example, while "usual costs" for medical and dental care are to be paid by CCA from the per diem payments provided under a contract to house state prisoners at CCA's Prairie Correctional Facility, the state is obligated to pay the costs of "extraordinary health care services" (e.g., the costs for treating HIV-positive prisoners; the costs for any illness requiring hospitalization or surgery; the costs for treating any chronic illnesses).

Many hard-to-predict cost items can be expected to affect the per diem prices negotiated by private correctional service providers in the future. Responsibility for the expenses incurred in handling the many unanticipated events which have plagued private providers in recent months -- escapes, disturbances, deaths, and law suits -- is being transferred from the public purse to private pockets. The repercussions are bound to affect operational costs such as payment of successful claims, and liability insurance fees, especially in the light of last summer's Supreme Court decision in the *McKnight* case.

Cost comparisons for correctional services are not easy to make. This is because the simple per-diem cost figures usually available for comparison of private sector cost with those in the public sector may ignore hidden system costs which should be included in a total cost analysis (administrative oversight, monitoring, interface, and other DOC staff time required for contracting and management, provision of central DOC services in areas such as information systems, classification, oversight and review of disciplinary matters, etc.). There are yet no widely accepted cost-accounting methods or standards for calculating the amount of each cost factor, including what assumptions about externalities should be used, in order to properly apportion them to public and private prison "overhead" categories.

As demonstrated recently by the developments in Brazoria County, Texas, where a straightforward comparison of per diem costs indicates that a particular private company is offering prison beds at a cheaper cost, some of the most important public policy issues may be illuminated by a careful examination about exactly why this is the case -- and an exploration of the expenditures which might arise in the event of unpredictable, but nonetheless foreseeable problems.

The Brazoria case, the latest developments at a CCA-run facility in Youngstown, Ohio -- as well as the non-renewal last year of a CCA contract for operation of a facility in South Carolina due to brutal treatment of juvenile offenders by inexperienced, poorly-trained staff -- raise yet another cost issue regarding the scale of expenses (for legal matters, staff training and other unexpected start-up costs) which may have to be absorbed by government when a contractor fails to deliver acceptable services.

## Professional Correctional Careers and Workforce Issues

Returning to more straight-forward questions about how states can best obtain the best services at the least cost over the long term, policymakers need to fully explore what implications privatization will hold in the future for the maintenance of a well-trained, experienced correctional workforce in their state. Many key questions have not yet been answered definitively. If privatization on a broader scale will entail assurances (as have been offered by CCA in Tennessee) that prison guards will not lose ground in terms of wages, benefits and job security, it will be important to examine the experience to date in the correctional field (or in other areas of privatized governmental services) about the reality of these promises. What is the real value of an CCA-style ESOP plan in comparison to the pensions secured by those who retire from state-run prisons? If claims about comparable wages and benefits were *actually* realized, what impact would this have on the cost savings promised by the proponents of privatization?

On the other hand, where no such assurances are forthcoming in this area, what barriers to effective operations will be created -- in terms of recruitment of competent, qualified professionals, line-staff morale, and increased absenteeism? The correctional services industry is already plagued by higher turnover than many other governmental sectors. Does actual experience support the claim of many critics that private correctional firms save money by deliberately "churning" staff positions -- holding them open for periods to save labor costs, and employing a disproportionate number of inexperienced, low-paid workers without vested pension rights? What level of realistic opportunities exist in privately-operated multi-national correctional companies for advancement by line-staff up the ranks, as compared with state-operated, civil service systems? Will reduced health and retirement benefits offered by private contractors to their employees result in

greater reliance on tax-funded benefits by these workers in later years after lay-off or retirement?

Labor costs make up the largest share of a prison's operating costs. A primary motivation for prison privatization may be to reduce labor costs on a total and/or per unit basis. The effects of prison privatization on staffing, training, turnover, compensation, career development, and unionization are therefore of paramount importance. These effects need to be carefully and objectively assessed.

Many of these issues revolve around the status and power of the guards union in states where unions are strong and where experience with privatization is scarce. What position would organized labor hold in a privatized future? What leverage might *unionized* private guards hold over workplace issues, having gained the right to strike?

### **Legal Issues**

Privatized operation of prisons and jails is a relatively new phenomenon. Many key legal and compliance issues are yet to be fully settled through litigation -- including those of accountability and liability for abuse of force, handling of disturbances and escapes, etc. Recent developments highlight these issues:

- The videotape from Brazoria County, Texas, showing Missouri inmates being mauled by guards in a privately operated jail
- The Justice Department investigations of incidents at the Bobby Ross Group facility at Spur, Texas, and Montana's severance of its BRG contract
- The US Supreme Court decision in the *McKnight* case
- The escape last year by a group of Idaho offenders with murder and sex-crimes convictions from a private facility in Louisiana raises again all the issues

(authority for capture and prosecution; inmate classification procedures) met in 1996 when two Oregon sex offenders escaped from a CCA-operated facility in Houston

Critics have raised many important issues about delegation of state authority to personnel who answer to private interests, but operate "under color of law" on behalf of the state. These criticisms go to the ability of state officials to assure contract compliance, perform effective monitoring of facility conditions, and respond effectively to instances of abuse of force, disturbances, escapes, and other security problems. The experience to date in Texas with oversight, monitoring, and control is far from encouraging. Texas is a state where correctional privatization has made broad inroads at both state and local government levels. The past decade of experience with privatization in that state has produced ample evidence of the many barriers and difficulties that can impede or thwart public control of private correctional policies and practices. A quick Internet search of the archives of Texas newspapers will produce a wealth of recent stories about fiscal fraud and mismanagement, as well as evidence of influence-peddling, co-optation, conflict of interest, and outright corruption.

In approaching the legal issues, the full implications and likely impact of the McKnight case need to be explored. Beyond the straightforward issues of law, this would include interviews of insurance executives about the risks and costs they foresee. Questions have been raised about whether the insurance coverage private prison companies offer to secure is adequate. An ex-lobbyist for CCA has alleged that the company has defrauded Hamilton County Tennessee in this regard, failing to supply proof-of-insurance documents required under contracts with the county. A recent investigation of this matter by the *Chattanooga Times* suggested the problem had not been resolved.

A detailed study of the difficulties in Texas, Louisiana, and Ohio has not yet been made, and in its absence it is very difficult to predict what the outcomes will be regarding the litigation arising from such misadventures (and who will bear the costs) or to trace the lines of legal responsibility and liability in cases (such as these) where aggrieved prisoners may file lawsuits against every colorable defendant.

The legal, policy, and political issues catalogued above are under hot debate in many states across the country. These disputes have by no means been laid to rest in any state where privatization has thrived -- and in fact the level of contention has recently *increased* in key states among those with the largest and longest track records with privatization of correctional services. The pace of developments with private contracting for delivery of correctional services in America has sped far ahead of the accumulation of an objective body of knowledge which America's policymakers need in order to make truly informed decisions about the degree to which they should look to the private sector for provision of these services in the future.

## Types of Privatization Being Utilized in the US

- Option 1: State owns *existing prison* and hires private contractor to operate the publically owned facility (halfway houses and proposed in D.C.).
- Option 2: State owns *existing prison* and sells facility to private vendor. Private vendor then enters into contract with state to house inmates in the now privately owned and operated facility (Washington D.C.).
- Option 3: State constructs *new prison* according to its specifications and then hires private contractor to operate the publically owned facility (Ohio and Michigan).
- Option 4: State funds construction of *new prison and owns the facility*. Awards contract to private vendor who builds and operates facility according to the vendor's specifications. (Texas State Prisons).
- Option 5: State funds construction for *all* facilities. State builds and operates portion of the facilities funded. Local government selects private vendor to build and operate outstanding portion of facilities funded (Texas State Jails).
- Option 6: Private contractor constructs *new prison* and enters into contract with state where facility is located to house the state's inmates in the privately owned and operated facility.
- Option 7: Private contractor constructs *new prison* and enters into contract(s) with a state(s) where the facility is not located to house inmates in the privately owned and operated facility (Youngstown).
- Option 8: Local municipal funds construction of facility through the development of a Not-For Profit Corporation which, after receiving state approval, sell tax exempt bonds to fund the construction and equipping of a facility to house inmates from other jurisdictions (Texas).
- Option 9: Consortium of counties own or have private facility and operate to house inmates from those counties.
- Option 10: State contracts with a private vendor to build and operate a prison in another jurisdiction (proposed in Oregon).

## Issues Related to Each Option

1. State Oversight of Privatization Effort (Florida and Texas Models)
2. Facility Buyout Option and Impact on Costs (Michigan)
3. Separate Contract with Vendor for Facility Lease/construction and Operations (Michigan)
4. Contract Monitoring (in house or contracted out)
5. Litigation and Liability
6. Competition (Triumvirate - Tennessee Model)

1999 Session

FISCAL ESTIMATE

ORIGINAL  UPDATED

DOA-2048 N(R10/98)

CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

AB 176

LRB 0475/1

Amendment No. if Applicable

Subject

Private Prisons – Changes in Tax Statutes

Fiscal Effect

State:  No State Fiscal Effect  
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

Increase Costs - May be Possible to Absorb  
Within Agency's Budget  Yes  No

Decrease Costs

Local:  No Local Government Costs

1.  Increase Costs  
 Permissive  Mandatory  
 2.  Decrease Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory  
 4.  Decrease Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:  
 Towns  Villages  Cities  
 Counties  Others \_\_\_\_\_  
 School Districts  WTCS Districts

Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under current law, no withholding of individual income tax is required from wages paid to an inmate working in a state prison when the wages are not more than \$2,000. The bill would provide the same treatment for wages paid to inmates in private prisons in Wisconsin, which would be authorized by the bill. This provision is not expected to have a significant impact on state tax revenues.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Wisconsin Department of Revenue  
 Dennis Collier, (608) 266-5773

Authorized Signature/Telephone No.

Yeang-Eng Braun  
 (608) 266-2700

*Yeang-Eng Braun*

Date

3/12/99

FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB # 475/1

INTRODUCTION # AB176

Admin. Rule #

Subject Private Prisons

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive
  - Mandatory
- 2.  Decrease Costs
  - Permissive
  - Mandatory

- 3.  Increase Revenues
  - Permissive
  - Mandatory
- 4.  Decrease Revenues
  - Permissive
  - Mandatory

- 5. Types of Local Governmental Units Affected:
  - Towns
  - Villages
  - Cities
  - Counties
  - Others \_\_\_\_\_
  - School Districts
  - WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

Long-Range Fiscal Implications:

Could result in additional lawsuits by inmates challenging placement which would require additional workload

Prepared By: / Phone # / Agency Name

Authorized Signature / Telephone No.

Date

Steve Tinker 6-0764

Susan Godwin 6-0425

3/9/99

DOJ

X ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

**FISCAL ESTIMATE**

DOA-2048 N(R10/98)

**Subject**

Authorizing the Department of Corrections to contract with private persons for the confinement of WI inmates

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

Increase Existing Appropriation  Increase Existing Revenues  
 Decrease Existing Appropriation  Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
 Permissive  Mandatory  
2.  Decrease Costs  
 Permissive  Mandatory

3.  Increase Revenues  
 Permissive  Mandatory  
4.  Decrease Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:  
 Towns  Villages  Cities  
 Counties  Others \_\_\_\_\_  
 School Districts  WTCS Districts

**Fund Sources Affected**

X GPR  FED  PRO  PRS  SEG  SEG-S

**Affected Ch. 20 Appropriations**

s.20.550 (1)(d)

**Assumptions Used in Arriving at Fiscal Estimate**

This bill would authorize the Department of Corrections to contract with private persons for the confinement of Wisconsin prison inmates in private prisons in Wisconsin. Enactment of this bill could possibly have the following fiscal effect on the State Public Defender's Office (SPD):

Depending upon the location and number of such private prisons in Wisconsin, it is possible that attorneys (both staff and private bar) could spend more time traveling to the various prisons throughout the state to see SPD clients. That is, the more institutions that exist, the more dispersed SPD clients (primarily appellate clients) would be, possibly resulting in more time spent on travel. Increased travel time for staff attorneys could mean less time available to spend on cases. Increased travel time for private bar attorneys could mean more money paid to the private bar attorneys for travel costs. (Private bar attorneys are reimbursed for travel at the rate of \$25 per hour if the attorney has to travel outside of his or her county or more than 30 miles away from his or her office.)

Without knowing the number of such private prisons or their locations or the number of SPD clients that will be detained in such prisons, it is not possible to estimate the increased travel costs that could result from enactment of this bill.

**Long-Range Fiscal Implications**

Possible increased travel costs, depending upon the number and locations of private prisons.

Agency/Prepared by: (Name & Phone No.)  
Public Defender/Gina Pruski/6-6782

(SPD)

Authorized Signature/Telephone No.

Date

March 8, 1999

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**FISCAL ESTIMATE**  
DOA-2048 N(R10/94)

**Subject**

Authorizing the Department of Corrections to contract with private persons for the confinement of prison inmates in private prisons in this state.

**Fiscal Effect**

**State:**  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget     Yes     No

- Increase Existing Appropriation       Increase Existing Revenues
- Decrease Existing Appropriation       Decrease Existing Revenues
- Create New Appropriation

Decrease Costs

**Local:**     No local government costs

- 1.  Increase Costs  
     Permissive     Mandatory
- 2.  Decrease Costs  
     Permissive     Mandatory

- 3.  Increase Revenues  
     Permissive     Mandatory
- 4.  Decrease Revenues  
     Permissive     Mandatory

- 5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties     Others \_\_\_\_\_  
 School Districts     WTCS Districts

**Fund Sources Affected**

GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

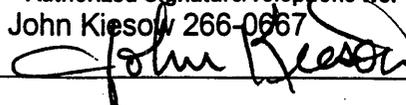
This bill draft has no fiscal effect on the Department of Health and Family Services.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)  
Cindy Daggett 266-5380

(DHFS)

Authorized Signature/Telephone No.  
John Kiesow 266-0667



Date: 9  
3/8/99

**FISCAL ESTIMATE WORKSHEET**

AB 176 1999 Session

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. LRB 0475/1	Amendment No.
---------------------------------------------	---------------

Subject  
Authorizing the Department of Corrections to contract with private persons for the confinement of prison inmates in private prisons in this state.

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	<b>\$</b>	<b>\$ -</b>
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues -	Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$</b>

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency/Prepared by: (Name & Phone No.) Cindy Daggett 266-5380	Authorized Signature Telephone No. <i>John Kiesow</i> John Kiesow 266-9622	Date 9 March 3, 1999
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## Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

### Assembly Bill 176

Authorizing the Department of Corrections to contract with an accredited private prison within the State of Wisconsin

Representative Scott Walker  
Chair, Corrections and the Courts Committee

March 10, 1999 10:00 AM

**Overcrowding:** As of March 5, 1999, the inmate population was 18,374 in a system that has an operating capacity of 11,020. Currently, the DOC is contracting for an additional 4,015 prison beds. Of those, 3,421 are in out-of-state cells, with 2,337 held at private prisons in Tennessee and Oklahoma.

Increasing the number of assaults on staff or potential for a riot, forcing a takeover of the system by a federal court (as was done in Texas) or releasing offenders from a prison system that has 76.4% in for assaultive offenses are the choices we face if we do not deal with overcrowding.

**Consistency:** Under current law, the DOC can contract with a private prison with any state in the country but Wisconsin to hold state inmates.

**Permanent Solution:** The DOC has requested funding for an additional 4,484 contract beds in the 2000-01 fiscal year. Unless more space is available in Wisconsin, out-of-state transfers will be a permanent part of dealing with overcrowding in the prison system.

**Economics:** Prisons – public or private – bring economic benefit to the community (and state). Jobs for correctional officers, support staff and administration would be kept in Wisconsin and not exported off to another state. In addition, the taxes (income, corporate, sales) paid by the employees and by the private company would be paid in Wisconsin.

**Support Systems:** For those concerned about inmates being sent out-of-state and away from family and other support systems, private prisons built in this state will help remove the need for out-of-state transfers.

**Safety:** Under our bill, the DOC has the ability to inspect and regulate private prisons operating in Wisconsin. In addition, the DOC is able to

require certain standards for prison operations – including the level of training for correctional officers.

Some opponents will point to isolated problems and claim that private prisons are not run like public systems. We heard that after 8 employees at the private prison holding Wisconsin inmates in Tennessee were fired last fall for using excessive force on inmates and not reporting it to the warden. An open records request reveals that during the last fiscal year, 8 public employees of the DOC in Wisconsin were terminated or disciplined for abuse of inmates. The bottom line is that our DOC has and must act to prevent mistreatment of inmates held in this state or in another, at a public institution or a private prison.

Overcrowding has an impact on the safety of staff and of the inmates, too. Over the past five years the inmate population has doubled in this state. In 1992, the number of assaults on correctional officers was 33. During the first six months of last year, the number of assaults on correctional officers had grown to 82.

**Wisconsin Inmates ONLY:** This bill allows the DOC to contract with a private company to hold ONLY Wisconsin inmates at a prison in Wisconsin. Current law allows the DOC to contract with a private company in another state. This bill does NOT allow the private prison to hold inmates from another state.

**Wages:** Some opponents of this bill will argue that private prisons pay low wages to correctional officers. Like the pay differences between correctional officers in different states (or between state institutions and county jails), the pay for correctional officers differs between different private firms. Currently, the starting pay at the CCA institution holding Wisconsin inmates in Tennessee is \$233 more per year than the starting pay by correctional officers in the State of Tennessee prison system.

**Loss of Transfers:** Currently, State Senator Pete Springer (D-Nashville) is introducing several pieces of legislation (24) that would limit or even ban the transfer of inmates from other states to Tennessee. As of last Friday, 1,486 Wisconsin inmates are being held at a private prison in Tennessee.

**Cost:** The current per diem for an inmate in a Wisconsin prison is \$56.72. The per diem cost for Wisconsin inmates being held at private prisons in Tennessee and Oklahoma is \$42.00 (including transportation and healthcare). Cost-of-living factors are different in those two states (lower taxes, more federal funds, etc), but the cost would still be less than Wisconsin (the budget request for DOC includes funding for 4,484 contract beds in 2000-01 at a cost of \$50.00 per bed).



## Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

### Assembly Bill 176 Authorizing the Department of Corrections to contract with an accredited private prison within the State of Wisconsin

Representative Scott Walker  
Chair, Corrections and the Courts Committee

March 10, 1999 10:00 AM

**Overcrowding:** As of March 5, 1999, the inmate population was 18,374 in a system that has an operating capacity of 11,020. Currently, the DOC is contracting for an additional 4,015 prison beds. Of those, 3,421 are in out-of-state cells, with 2,337 held at private prisons in Tennessee and Oklahoma.

Increasing the number of assaults on staff or potential for a riot, forcing a takeover of the system by a federal court (as was done in Texas) or releasing offenders from a prison system that has 76.4% in for assaultive offenses are the choices we face if we do not deal with overcrowding.

**Consistency:** Under current law, the DOC can contract with a private prison with any state in the country but Wisconsin to hold state inmates.

**Permanent Solution:** The DOC has requested funding for an additional 4,484 contract beds in the 2000-01 fiscal year. Unless more space is available in Wisconsin, out-of-state transfers will be a permanent part of dealing with overcrowding in the prison system.

**Economics:** Prisons – public or private – bring economic benefit to the community (and state). Jobs for correctional officers, support staff and administration would be kept in Wisconsin and not exported off to another state. In addition, the taxes (income, corporate, sales) paid by the employees and by the private company would be paid in Wisconsin.

**Support Systems:** For those concerned about inmates being sent out-of-state and away from family and other support systems, private prisons built in this state will help remove the need for out-of-state transfers.

**Safety:** Under our bill, the DOC has the ability to inspect and regulate private prisons operating in Wisconsin. In addition, the DOC is able to require certain standards for prison operations – including the level of training for correctional officers.

Some opponents will point to isolated problems and claim that private prisons are not run like public systems. We heard that after 8 employees at the private prison holding Wisconsin inmates in Tennessee were fired last fall for using excessive force on inmates and not reporting it to the warden. An open records request reveals that during the last fiscal year, 8 public employees of the DOC in Wisconsin were terminated or disciplined for abuse of inmates. The bottom line is that our DOC has and must act to prevent mistreatment of inmates held in this state or in another, at a public institution or a private prison.

Overcrowding has an impact on the safety of staff and of the inmates, too. Over the past five years the inmate population has doubled in this state. In 1992, the number of assaults on correctional officers was 33. During the first six months of last year, the number of assaults on correctional officers had grown to 82.

**Wisconsin Inmates ONLY:** This bill allows the DOC to contract with a private company to hold ONLY Wisconsin inmates at a prison in Wisconsin. Current law allows the DOC to contract with a private company in another state. This bill does NOT allow the private prison to hold inmates from another state.

**Wages:** Some opponents of this bill will argue that private prisons pay low wages to correctional officers. Like the pay differences between correctional officers in different states (or between state institutions and county jails), the pay for correctional officers differs between different private firms. Currently, the starting pay at the CCA institution holding Wisconsin inmates in Tennessee is \$233 more per year than the starting pay by correctional officers in the State of Tennessee prison system.

**Role of Government:** Some will argue that public safety is not an area that should be turned over to the private sector. Our bill would not allow the DOC to give up responsibility for Wisconsin inmates. Private prisons in Wisconsin would operate under the authority of the DOC and would hold inmates only through specific contracts with the state.

Since 1993, the Milwaukee County Transit System has contracted with Wackenhut to cover security on the bus system that was previously provided by Sheriff's Deputies. The contract was renewed for five more years in 1998.

**Loss of Transfers:** Currently, State Senator Pete Springer (D-Nashville) is introducing several pieces of legislation (24) that would limit or even ban the transfer of inmates from other states to Tennessee. As of last Friday, 1,485 Wisconsin inmates are being held at a private prison in Tennessee.

**Cost:** The current per diem for an inmate in a Wisconsin prison is \$56.72. The per diem cost for Wisconsin inmates being held at private prisons in Tennessee and Oklahoma is \$42.00 (including transportation and healthcare). Cost-of-living factors are different in those two states (lower taxes, more federal funds, etc), but the cost would still be less than Wisconsin (the budget request for DOC includes funding for 4,484 contract beds in 2000-01 at a cost of \$50.00 per bed).

**ASSEMBLY COMMITTEE ON  
CORRECTIONS AND THE COURTS**

AGENDA

Wednesday, March 10, 1999

10:00am Room 424-northeast

I. Call to Order

II. Roll Call

III. Public Hearing

A. **Assembly Bill 24** (*Schneider/Welch*) regulating telephone solicitation by prisoners and providing a penalty.

B. **Assembly Bill 31** (*Schneider/Schultz*) prisoner access to personal information and contract authority of the department of corrections.

C. **Assembly Bill 99** (*Wieckert/Ellis*) sex offender registration requirements for persons who are on probation, parole or extended supervision and providing a penalty.

D. **Assembly Bill 176** (*Walker/Darling*) authorizing the department of corrections to contract with private persons for the confinement of Wisconsin prison inmates in private prisons in this state.

E. **Assembly Bill 182** (*Foti/Walker*) prisoner access to personal information and contract authority of the department of corrections.

V. Announcements

A. Next meeting

VI. Adjournment



## Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

December 17, 1997

Gary Lonzo, President  
AFSCME Council 24  
8033 Excelsior Dr., Suite C  
Madison, Wisconsin 53717

Dear Gary:

During my brief tenure in the Wisconsin State Assembly, I have enjoyed working with the men and women who work in our state corrections system on a number of key issues. Last session, we worked together on the bill to build a Supermax prison to place our problem inmates away from the general population. I was glad to make the arguments with members of the Criminal Justice and Corrections and Joint Finance committees and on the floor as to why this was important for the safety of our correctional officers.

During this session, I proudly co-authored Truth-in-Sentencing with Representative Sykora and was happy to have your support as we look to replace "good time" with "bad time" and keep criminals in prison for their entire sentence. I was also happy to push for new prison beds in the budget and to fight to keep and add to the number introduced by the Governor in his budget recommendations.

In my opinion, the greatest challenge we face within state government is the issue of inmate overcrowding. I will continue to work to build more prison capacity. Under the current climate, however, it is very difficult to convince my colleagues to fund more prison construction within the next year. Considering the fact that our system is built to hold 9,538 and the adult population as of December 12, 1997 was 14,741, it is clear that we must consider additional short-term options.

Currently, we hold 630 inmates in county jails in Texas and have the statutory authority to increase that number to 700. In addition, the 1997/98 state budget provides funding for 500 out-of-state contract beds with a private facility. We also added funding to bring on 1,000 more contract beds by the end of the biennium (to replace intensive sanctions).

The capital budget provides for constructing 1,000 medium security beds and a 600-bed detention facility in southeastern Wisconsin for parole and probation violators (on which I worked very hard on with local officials). These facilities, however, will not be ready until after the year 2000.

With the number of inmates coming into the corrections system climbing each month, we are nearing a crisis situation. Our bill to allow DOC to contract with a private firm in this state or in another state is a response to the reality that we need as many options as possible to deal with overcrowding within the current system. At best, it seems disingenuous to raise concerns about private prisons in Wisconsin when your organization did not send out a single memo regarding the 1997/98 state budget which included contracting for 500 beds with a private prison in another state.

In your December 8, 1997 press release, you state that "All recent studies we have seen, including the abhorrent beating of inmates in a private Texas facility, show that privatization leads to abuse and mishandling of inmates." Please provide me with copies of these studies, because all of the peer-reviewed studies that I have seen show just the opposite to be true.

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Gary Lonzo  
December 17, 1997  
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A study by Professor Charles H. Logan of the University of Connecticut entitled, "Comparing Quality of Confinement in a Public and a Private Prison" actually gave a higher overall rating to private prisons versus public prisons, as well as higher scores for security, safety, order, activity, conditions and management. Last December, Professors William G. Archambeault, Ph.D. and Donald R. Deis, Jr., Ph.D. of Louisiana State University published, "Cost Effectiveness Comparisons of Private Versus Public Prisons in Louisiana" and found private prisons to be "significantly more cost-effective to operate by 11.69% to 13.8%," to "provide safer work environments for employees," and to "provide significantly safer living environments for inmates in terms of preventing assaults by inmates on inmates."

The 1996 Annual Report of the Florida Corrections Commission endorsed privatization, encouraged expansion and fuller utilization of the exist[ing] privatized operations."

In December of 1996, the Wisconsin Policy Research Institute published the report, "Controlling Prison Costs in Wisconsin" which provided a comprehensive review of privately-operated prison facilities. The reports projects a cost savings of 11% to 14% for the state and notes the high level of satisfaction from elected officials of the management regarding these facilities. Furthermore, the report notes that the business agent of Council No. 65 of AFSCME has been open to working with Corrections Corporation of America (CCA) in Minnesota.

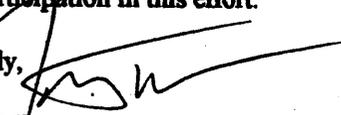
In addition, your press release referenced the incident at a county jail in Texas that was managed by CCRI. First, pointing to one isolated incident as an indictment of the entire system of privately-run prisons is absurd. Interestingly, the week that "Dateline NBC" ran the videotape from Brazoria County, Texas and interviewed the inmates was also the week that "Prime Time Live" ran a story on inmate beatings at Georgia prison run by public employees. Should we assume that inmates are beat at all prisons - public and private - based on these stories? Or closer to home, should we assume that all guards discriminate against minorities because of the story of one officer? Of course not.

Second, what you conveniently left out in your statement "including the abhorrent beating of inmates in a private Texas facility," is the fact that the Wisconsin Department of Corrections had reviewed a facility operated by CCRI when considering contracts for the current inmates held in Texas jails and had rejected the CCRI-run facility because of concerns over management. In other words, our DOC officials are capable of choosing between a qualified private prison and an unqualified private prison.

Which leads me to the final point. When Secretary Sullivan testified before the Assembly Committee on Corrections Facilities, he mentioned an interest in contracting with a private prison in Wisconsin if we could also forward legislation that would provide DOC with oversight authority over these private prisons. According to last December's Wisconsin Policy Research Institute report, 28 private facilities were accredited by the American Correctional Association. Of the remainder, 10 were in the progress of being accredited, 18 were seeking accreditation and 37 were not accredited.

We would be open to drafting language that would limit contracting for prison beds with private firms only to accredited facilities (or some similar language) as a way to address some of your potential concerns. We ask for your participation in this effort.

Sincerely,

  
Scott Walker  
State Representative  
Chair, Corrections Facilities Committee

cc: Governor Tommy G. Thompson; Secretary Michael Sullivan; Speaker Scott Jensen; Representative Bonnie Ladwig; Senator Dave Zien; members of Corrections Facilities Committee



**Alberta Darling**  
Wisconsin State Senator

March 10, 1999

Assembly Bill 176

Testimony before the Assembly Committee on Corrections and Courts

Chairperson Walker, Representatives: Thank you for holding this hearing today and hearing testimony on Assembly Bill 176.

We are currently in a state of crisis in regards to our prison population. With over 7,000 more prisoners than our current system was designed for, we must take efficient, effective, safe and proactive steps to ensure we can continue to keep criminals in prison, and off the streets.

In order to ease overcrowding, Wisconsin is currently transferring prisoners to out-of-state prisons. While expedient, this policy costs Wisconsin taxpayers in excess of \$60 million annually.

Allowing for the construction and operation of private prisons in Wisconsin would address the overcrowding issues, while providing new jobs in the state.

Private prisons in Wisconsin would be safe, economical, and close to support agencies for staff and inmates.

**Safe.** Overcrowding prisons are dangerous institutions, to the staff and to other inmates. Easing overcrowding provides for a more conducive environment.

**Economical.** A prison undoubtedly brings a certain amount of economic impact to the community it is placed in. This legislation ensures that those communities benefited by Wisconsin taxpayer monies for prisons are in Wisconsin. Private prisons in Wisconsin would pay Wisconsin corporate, income and sales taxes, as well as their employees, creating an incredible economic boom for the host committee. In addition, by placing private prisons in Wisconsin, we will put an end to the export of our correctional job opportunities.

**Local.** Proponents of transferring prisoners out of state have stated that inmates need support groups and family members as a part of their rehabilitative program. By allowing for the construction and operation of private prisons in Wisconsin, we can keep those integral emotional support networks nearby.

The facts illustrate the simple truth, the benefits of allowing construction and operation of private prisons in Wisconsin are tremendous, not only for the rehabilitative process of the inmate, the need to ease overcrowding, but also to Wisconsin citizens, who we must always remember is paying these bills.

Thank you again for hearing testimony on Assembly Bill 176. I would be happy to further discuss this legislation with any of you

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